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Attorney for: Defendant-Appellant Frederick Thomas

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

FREDERICK THOMAS,

Defendant-Appellant.

No. 2:12-CR-00004-027-APG-GWF

**(1) CORRECTED, UNOPPOSED MOTION
TO UNSEAL AND PROVIDE COPIES OF
BAIL REPORT(S) FOR USE IN PENDING
APPEAL;**

AND

(2) [PROPOSED] ORDER RE SAME

I, Mark D. Eibert, declare as follows:

1. I am the appointed counsel of record under the Criminal Justice Act for Mr. Frederick Thomas in the direct Ninth Circuit appeal (No. 15-10000) of the Judgment and sentence in the above case.

2. I expect to file a motion for release pending appeal in the Ninth Circuit.

3. In order to fully inform the Ninth Circuit of many of the relevant facts, I need to submit to the Ninth Circuit the bail report(s) that were submitted to this Court on or about March 21, 2012. At that time, Pretrial Services Officer Jaime Stroup wrote a bail report addressed to the Honorable Magistrate Judge Carl W. Hoffman, attaching a bail report from the Middle District of Florida. Pretrial Services recommended releasing Mr. Thomas on his own

1 recognizance, and the Court did so. Mr. Thomas remained free on his own recognizance for
2 years, even after sentencing, and timely self-surrendered to serve his prison sentence. However,
3 on March 18, 2015, this Court denied a motion by prior counsel for bond pending appeal.
4 Docket # 948. Undersigned counsel wishes to ask the Ninth Circuit to make its own
5 determination on this issue as permitted under Federal Rule of Appellate Procedure 9(b) and (c)
6 and Ninth Circuit Rule 9-1.2.

7 4. With the permission of Pretrial Services Officer Erin Oliver, undersigned counsel
8 reviewed the bail report(s) at his local Pretrial Services Office. Ms. Oliver indicated, however,
9 that in order to provide me with a copy to present to the Ninth Circuit along with my motion for
10 release pending appeal, I would need an Order from this Court.

11 5. Counsel intends to use this bail report solely for purposes of a motion for release
12 pending appeal in the Ninth Circuit, and to file it under seal in the Ninth Circuit.

13 6. Opposing counsel, AUSA Elizabeth Olson White, Esq., has graciously stated that she
14 does not oppose this motion.

15 7. A proposed Order containing the restrictions set forth above is below this motion.

16 8. For the foregoing reasons, undersigned counsel respectfully requests that this Court
17 enter the proposed order attached below unsealing these documents and providing copies to
18 counsel for both parties for use in a motion directed to the Ninth Circuit for release pending
19 appeal only.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct to the best of my knowledge and belief. Executed at Half Moon Bay, California
22 on October 21, 2015.

23 Respectfully submitted,

24 /s/ *Mark D. Eibert*

25 Mark D. Eibert
26 Attorney for Defendant-Appellant
27 FREDERICK THOMAS
28

ORDER

IT IS SO ORDERED:


1. The bail report submitted to the Court on or about March 21, 2012 in this case, including the bail report from the Middle District of Florida which was attached thereto, shall be unsealed and Pretrial Services shall provide copies to counsel for both parties only.

2. Dissemination of the documents described above shall be limited to counsel for the parties in this case and their staffs and the defendant and solely for the purpose of litigating any motion for release pending appeal in the Ninth Circuit in Appeal No. 15-10000. Dissemination to anyone else for any other purpose is prohibited.

3. Should counsel for either party wish to file any or all of the above documents in the Ninth Circuit, they shall be filed under seal with the permission of that Court.

IT IS SO ORDERED.

Dated: October 22, 2015


GEORGE FOLEY, JR.
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this document on Plaintiff's counsel, via electronic service through the PACER system on October 21, 2015.

/s/ Mark D. Eibert

Mark D. Eibert
Attorney for Defendant-Appellant
Frederick Thomas

PROOF OF SERVICE BY MAIL

The undersigned hereby certifies that his business mailing address is P. O. Box 1126, Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United States of such age and discretion to be competent to serve papers, and that on the below date he caused copies of

UNOPPOSED MOTION TO UNSEAL AND [PROPOSED] ORDER RE SAME

To be served by both U.S. Mail, postage pre-paid, and e-mail, to:

Elizabeth Olson White, Esquire
Assistant U.S. Attorney
OFFICE OF THE U.S. ATTORNEY
Suite 600
100 West Liberty Street
Reno, NV 89501
E-mail: Elizabeth.O.White@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 21, 2015 at Half Moon Bay, California.

/s/ Mark D. Eibert

Mark D. Eibert
Attorney for Defendant-Appellant